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In view of the existing state of affairs in Travancore, this section 8-A is inserted as a new provision. It will apply to the transferred area and it will be a temporary measure.

SRI K. BALASUBRAMANYA AYYAR : The Government are applying the Village Courts Act to that area.

* THE HON. SRI M. BHAKTAVATSALAM : What will apply is the proposed section 8-A. It will apply to Kanyakumari and Shencottah.

MR. CHAIRMAN : The question is—

'That the Madras Village Courts (Amendment) Bill, 1961 (L.C. Bill No. 2 of 1961), be taken into consideration'.

The motion was put and carried and the Bill was taken into consideration.

Clauses 2 to 9 were put and carried.

Clause 1 and the Preamble were put and carried.

THE HON. SRI M. BHAKTAVATSALAM : Sir, I move—

'That the Madras Village Courts (Amendment) Bill, 1961 (L.C. Bill No. 2 of 1961), be passed'.

MR. CHAIRMAN : The question is—

'That the Madras Village Courts (Amendment) Bill, 1961 (L.C. Bill No. 3 of 1961), be passed'.

The motion was put and carried and the Bill was passed.

(2) THE MADRAS HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS (AMENDMENT) BILL, 1961 (L.C. BILL NO. 3 OF 1961).

* THE HON. SRI M. BHAKTAVATSALAM : Sir, I move—

'That the Madras Hindu Religious and Charitable Endowments (Amendment) Bill [a], 1961 (L.C. Bill No. 3 of 1961), be taken into consideration'.

Sir, section 9 (2) (*a*) and (*b*) of the Madras Hindu Religious and Charitable Endowments Act, 1959, prescribed the method of recruitment to the post of Commissioner and Deputy Commissioners. This section as it stands does not permit the appointment of Deputy Commissioners to the post of Commissioner by promotion and, likewise, the appointment of Assistant Commissioner to the posts of Deputy Commissioners. In any service, while prescribing methods of appointments, appointment by promotion is also generally provided for and the absence of such a provision in the present Hindu Religious and Charitable Endowments Act has denied the prospects of promotion to the Assistant Commissioners and Deputy Commissioners. This will make them lose their enthusiasm and incentive to work and consequently will affect the interest of the

[a] Published in the *Fort St. George Gazette* Extraordinary, dated 13th March 1961.

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department. It is therefore considered necessary that the Act should be amended so as to make Deputy Commissioners and Assistant Commissioners eligible to be appointed by promotion as Commissioner and Deputy Commissioners respectively. I may point out, Sir, that in the rules framed under the previous Act there was this provision, but by some mistake or oversight, the present Act has excluded promotion. It is also considered necessary that the field of recruitment to the posts of Commissioner and Deputy Commissioners should be made wider by making members of the Madras State Judicial Service also eligible for appointment to the post of Commissioner and by making appointment to the posts of Deputy Commissioners by agreement or on contract basis. This will enable the Government to select suitable persons to fill the posts of Commissioner and Deputy Commissioners. Clause 2 of the Bill seeks to achieve the objects in view.

Sir, I have briefly indicated the main purposes of this legislation. I commend the motion for the acceptance of the House.

MR. CHAIRMAN : Motion moved—

'That the Madras Hindu Religious and Charitable Endowments (Amendment) Bill, 1961 (L.C. Bill No. 3 of 1961), be taken into consideration'.

SRI K. BALASUBRAMANYA AYYAR : Mr. Chairman, Sir, as far as the promotion of a Deputy Commissioner as the Commissioner is concerned, the Government should think twice before having a provision like this. The Hon. the Mover of the Bill will remember that at the select committee stage of the Hindu Religious and Charitable Endowments Bill, it was seriously mentioned by my Hon. Colleague Sri P. T. Rajan that there must be a judicial officer. He even went to the extent of saying that the judicial proceedings should be separate from the administrative proceedings. But we did not accept his suggestion, and the Act has now to be amended. The Hon. the Mover of the Bill then assured us that the Commissioner would be a judicial officer, that he would be entrusted with the hearing of suits, and if there were many suits and many applications and decisions had to be arrived at in many cases, then the Commissioner would have one Deputy Commissioner, a judicial officer. This is what was understood at that time. If there is a Deputy Commissioner, and if he is entrusted with the duty of hearing suits and so on, it is better that we should not have this promotion to be made from the Deputy Commissioner. That will be a wholesome provision. He will not be thinking of any promotion from the post of Deputy Commissioner to the post of Commissioner. It will be good especially when he is a judicial officer. Of course, the Government did not accept our original proposal and it is no use talking about it now. In so far as this person is entrusted with the duty of hearing applications, suits, etc., which is a judicial function, it is better that he does not have any idea of being promoted as Commissioner because that will give him that kind of independence which he will not have otherwise. Of course,

3-40 p.m.

as originally suggested by us, if the Commissioner himself is a judge, that is a different matter. The Hon. Mover explained his difficulty in accepting that suggestion. But this provision of promoting a Deputy Commissioner as Commissioner will not ensure independence of judgment on the part of the Deputy Commissioner.

SRI P. T. RAJAN : An administrative officer may be promoted, not a judicial officer.

SRI K. BALASUBRAMANYA AYYAR : The Deputy Commissioner is a judicial officer.

SRI P. T. RAJAN : Only one of the Deputy Commissioners.

SRI K. BALASUBRAMANYA AYYAR : What I say is, the Government are seeking to amend the existing provision. It need not be done. Even the present provision of having a judicial officer as Deputy Commissioner was decided upon by the Hon. Mover after very carefully considering our suggestions. The only point is, he was not in favour of bifurcation. Let the Government appoint the Deputy Commissioner as Commissioner on a contract basis. Otherwise, he would always be feeling that he is subordinate to the Commissioner. We have heard it said even in the case of High Court and Supreme Court Judges that there should be no chances of promotion for them. Well, that is a general statement we have heard. That is a wholesome principle. About the other matter, the Government can have even direct recruitment. But personally, I would very much favour a man who has got administrative experience either as Assistant Commissioner or otherwise. A direct recruit does not know the working of the schemes, the details of schemes. He may enter upon his duties either with good notions or other notions. But if a man with experience is appointed, it will be very good, because he will have thorough experience of the administrative work involved in Hindu religious endowments and temples.

THE HON. SRI M. BHAKTAVATSALAM : That can be only by promotion.

SRI K. BALASUBRAMANYA AYYAR : I made it clear that it could be so far as the Assistant Commissioner was concerned.

SRI P. T. RAJAN : Why should you deprive the Deputy Commissioner of the benefit?

SRI K. BALASUBRAMANYA AYYAR : He must be an administrative man.

* SRI P. T. RAJAN : Mr. Chairman, with all due respect to my Friend, let me say this. When my Friend suggested that there should be an Additional Commissioner who must be a judicial officer, having nothing to do with administrative work, the Hon. Minister said that he would not accept the suggestion. Now, the

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proposal of the Hon. Minister is to promote the Deputy Commissioner, whether he be an administrative officer or a judicial officer, to be Commissioner. We should not stand in the way. What I would urge on the other hand is the appointment of an Additional Commissioner who will be independent of the Commissioner himself, so far as the judicial functions of the Board are concerned.

SRI MOHAMED RAZA KHAN : Sir, after two eminent authorities on the question have spoken, I am in a difficult position to speak. But my line of argument is different. I was very sorry to hear the Hon. Minister's arguments when he moved that the Bill be taken into consideration. It is an unfortunate phenomenon in our State that once a Bill is passed and becomes law, within six months thereof another amending Bill is brought forward without any reason or logic behind. Whatever the arguments of the Hon. Members against such amending Bills, the House must accept the Bills. That is the position in which we find ourselves today. I was listening to the statement of the Hon. Minister and I am not convinced by it. When they drafted the original Bill, the Government had plenty of time to come to a decision as to what should be the procedure for appointments. It is surprising that the anomaly that they talk of now did not occur to them then, i.e., lack of provision for promotion of Deputy Commissioner as Commissioner. How is it that after one year of the passing of the original Act, this necessity has arisen? The Hon. Minister must take the House into confidence in this matter.

SRI P. T. RAJAN : There is a vacancy now.

SRI MOHAMED RAZA KHAN : I am coming to that now. The Hon. Minister stated that the enthusiasm of the Assistant and Deputy Commissioners would be lost if there were no prospects for their promotion. The Hon. Minister could have thought about all this at that time itself and made suitable provision in the parent Act. When we say that appointment should be by direct recruitment, we take that decision for valid reasons. My Friend, Mr. Rajan, has rightly interrupted me by saying that the present Commission i sretiring. I think he is retiring this month or next month. I do not know how many Deputy Commissioners are there. We do not have all these details and yet we are asked to pass the Bill. Obviously there was a lacuna in the parent Act. How is it that the Department when they advised the Government forgot about this?

Then, Sir, there was one other argument. Usually, when a comprehensive Bill is brought forward, it is stated, in defence of certain provisions, that they were in the original Act and that they have been simply copied in the new Bill. It is one of our conventions, if I may say so, to incorporate most of the old provisions in the new Bill. The Government used to defend them saying there is nothing wrong in incorporating the old provisions in the new Act. Here it is stated, this provision was in the old Act and

that by oversight it was not incorporated in the parent Act now in force. I do not know how such an important thing was lost sight of. The Minister says he is now rectifying it.

* THE HON. SRI M. BHAKTAVATSALAM : In my opinion, it was oversight, not because the hon. Member calls it oversight. This question was not specifically discussed at all by the Joint Select Committee. It was neither raised nor discussed. There was nothing before the Committee even to suggest that there was no provision for promotion. This is what I meant when I said it was lost sight of.

SRI MOHAMED RAZA KHAN : I submit, Sir, that the Hon. 3-50 p.m. Minister's intervention has not strengthened his argument. He said in introducing this measure that the matter was left out by oversight. When the Government bring in an important legislation like this, consolidating all the old legislations in the matter they take advantage of it and make all necessary and suitable amendments in the consolidated legislation. In the old Act there was the provision for the promotion of the Deputy Commissioner as Commissioner. And the Hon. Minister says that this was lost sight of. I do not understand how such an important thing as this could be lost sight of. It is only six months since we passed that legislation. When we bring in any amendments we must convince the public and the Hon. Minister should convince us. It is no use saying that this is a small Bill and therefore it can get through. I hope at least in future such things would be avoided particularly when the original legislation had gone through a Joint Select Committee consisting of eminent men. I submit that this question ought to have been thought of then. And for good reasons they might have said such a provision was unnecessary. Now the Government think that such a provision is necessary. Therefore I oppose the Bill, Sir.

* SRI M. SESHACHARIAR : Mr. Chairman, Sir, I would like to say only a word about the amending Bill. The contention appears to be that if there is a mistake in the Bill which is found later on, it should not be rectified. Probably they might not have been vigilant at that time or they might have somehow forgotten it then. The other contention is that promotion should not be made or some such thing. I may point out that the Deputy Commissioner will be promoted only if he is eligible, if he has judicial experience and if he is entitled to such promotion. If he is a judicial officer and deserves to be promoted there should be such a provision as is now sought to be introduced by the amendment. If he has no judicial experience he may not be promoted at all. The idea of the Government appears to be that the Deputy Commissioner who happens to have judicial experience, has no chance of promotion under the existing provision. Therefore they want the provision to be amended. Suppose there is a person with judicial experience appointed as Deputy Commissioner, and he is in the run

for promotion to the post of Commissioner. There is no provision in the existing Act for promoting him as Commissioner. This has therefore got to be rectified.

* DR. A. LAKSHMANASWAMI MUDALIAR: Mr. Chairman, Sir, I am afraid there is no necessity for such an amendment in view of the provision already existing. The only thing is the existing provision should be intelligently used. The position is that appointment to the post of the Commissioner shall be by transfer from among the members of the Madras State Higher Judicial Service or the Madras State Judicial Service or any other service or direct recruitment. You know there are other agencies, like the University where direct recruitment is the rule whether it be for lecturers or readers or anybody else. All we do is to allow all these people also to apply, and that removes the possibility of patronage in the hands of the person concerned. Therefore there is no reason why the Deputy Commissioner should not be an applicant for direct recruitment. After all the Government are the ultimate authority to make the appointment and we are not going to fetter their hands in the choice. Why should not the Government give them that opportunity?

The real objection, which I can see from Sri K. Balasubramanya Ayyar and Sri Raza Khan, is to this principle of promotion which implies that a certain amount of discretion or patronage may be there. (Interruption). The normal course is by direct recruitment by appointing a small committee. The people in the lower rungs have always the opportunity to apply. Nobody can be promoted. For instance in the University, as you, Sir, are doubtless aware, for such appointments there is a well thought out plan. If therefore the Deputy Commissioner also applies when there is a vacancy in the post of the Commissioner there is nothing to prevent the Government to refer the cases to a small committee and then select the best man they can think of. But if you are going to give a *carte blanche* to the Government to promote any Deputy Commissioner, no reasons may be assigned. I think it is not a very good provision—particularly without having had the experience of the working of the Act—to introduce within so short a time. Sir, I know the great discussion that took place in Ootacamund and I feel that this is not a justifiable step. I can have hardly anything against any person that might be considered fit for appointment. My submission is, let him apply according to the existing provisions of the Act, and he can be considered as a direct recruit. This will be much safer for him.

Sri P. T. Rajan rose.

MR. CHAIRMAN: I am sorry, the hon. Member cannot speak for a second time.

* THE HON. SRI M. BHAKTAVATSALAM: Mr. Chairman, Sir, about amendments to legislations, we are having a number of amendments whenever we feel the need for them. We are not

omnipotent and we sometimes do commit mistakes in spite of all our experience and capacity. Not only the Ministers and the Government but also the Members do commit errors of commission or omission and that is how so many amendments to legislation do come up before the House. The House considers them and accepts many of those amendments. Just a little while ago, I brought forward an amendment to another Act. It is no doubt an old Act, the Village Courts Act. Next week I shall be bringing forward another amendment to the Wakf Act.

SRI MOHAMED RAZA KHAN : I know that.

* THE HON. SRI M. BHAKTAVATSALAM : That Act was passed only recently. That was passed in Parliament also. The members of Parliament bestowed best consideration on that legislation. There was recently a conference, an All India Conference which was attended by many eminent Moulvis. They pointed out a difficulty. Therefore I am bringing forward an amendment to that legislation. We in the Government are not omniscient. We may not foresee all these requirements.

Sir, I am not able to understand the difficulty of the hon. Member Sri K. Balasubramanya Ayyar nor the fear of the hon. the Leader of the Opposition. We had discussed the need for having a judicial officer in the Endowments Board. Originally a suggestion was made before the Joint Select Committee that judicial work may be separated from the administrative work. I said then that it was against the very pattern of administration that had been accepted, and therefore it would not be accepted. Even befor ethe Joint Select Committee accepted the suggestion I myself was seriously thinking about having the Judicial Officer. I was not quite satisfied with the judicial disposal of the cases. Therefore I wanted that there should be one judicial officer. Therefore the Government had asked the High Court to suggest some name and the High Court sent a panel of judicial officers. This was forwarded to the Public Service Commission and finally we had a judicial officer as the Deputy Commissioner. This was long before the Joint Select Committee accepted the suggestion to have a judicial officer.

Now, in the present Act there is this provision. Either the Deputy Commissioner or the Commissioner, at least one of them should be a judicial officer. If the Commissioner happens to be a judicial officer, there is no need that the Deputy Commissioner should be a judicial officer. But there is no bar to the Government having more judicial officers than one. It is obligatory on the part of the Government to have one judicial officer. He may be either the Commissioner or the Deputy Commissioner. If the Deputy Commissioner is a judicial officer, the Commissioner need not be a judicial officer. If the Commissioner is a judicial officer the Deputy Commissioner need not be a judicial officer.

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A non-judicial Deputy Commissioner can take the place of the Commissioner, if one of the Deputy Commissioners is a judicial officer. I will come to the question of promotion later on. A non-judicial Deputy Commissioner can take the place of a Commissioner. The principle that there must be one judicial officer is not affected. It may be a Deputy Commissioner or Commissioner. Then again take the case of the Assistant Commissioners. (Interruption). The hon. Member Sri Balasubramanya Ayyar has answered the point raised by him. When we appoint a person as the Commissioner, it is not merely a question of picking out a person. He must have the aptitude, experience and all that. Therefore the hon. Member will realise and admit that it is more advantageous to have one who has had some experience regarding the functions of the Commissioner and the Deputy Commissioner. Now, if there is a Deputy Commissioner who is serving, who is qualified, and who is fit to serve as Commissioner, there is no obligation on our part to have a judicial officer as Commissioner. If there is a Deputy Commissioner who has served well, is qualified for it, and has got all the experience and is fit and suitable to be appointed as Commissioner, what is wrong in appointing him, as the Commissioner, is the question. Before this Act was passed, there was a temporary vacancy in the post of the Deputy Commissioner. One of the Senior Assistant Commissioners was appointed as the Deputy Commissioner. He servied for some months, and he has been reverted and is now working only as Assistant Commissioner. Sometimes we have to fil up the posts temporarily. Suppose the Commissioner takes leave for two months. What should I do? Should I advertise the post? (Dr. A. Lakshmanaswami Mudaliar : One could be put in charge). I thought it could be done. But our Law Department was of the view that under the provisions of the Act, it could not be done, even on a temporary basis. Today if a Deputy Commissioner goes on leave, and he wants to be urgently relieved, I cannot appoint an Assistant Commissioner as Deputy Commissioner even temporarily. That is the advice that I got from the Law Department. Similarly if the Commissioner suddenly takes leave, leave alone the question of filling it up permanently—I cannot appoint a Deputy Commissioner to that post even for a period of one month or two months. The advice given to me was that unless the Act was amended, even for a few days I could not appoint any one as the higher officer. That is the difficulty which we have been feeling. I am really surprised that the hon. the Leader of the Opposition should have taken up this attitude and tendered this advice to the Government about promotions. According to him promotions are totally bad and nobody should have any promotion. For instance, a District Munsif should not be promoted as a Subordinate Judge.

DR. A. LAKSHMANASWAMI MUDALIAR : Let us confine ourselves to the provisions in the Amending Bill, and let us not go over the entire range between the Himalayas and Cape Comorin.

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*THE HON. SRI M. BHAKTAVATSALAM: One department is as good or as bad as another department. We have so many administrative authorities, and people are looking up to promotions. A man who has served well expects to be promoted. Now according to the suggestion given, he must stand in the queue and apply for the post to be filled up by direct recruitment, and a committee should be appointed for the purpose. I do not think that this is accepted anywhere as the correct procedure. Even taking this department, I may assure the hon. the Leader of the Opposition that there is no question of exercising patronage and there is no opportunity for it either. We do not take opportunities or seek opportunities to exercise any patronage. Even where it is not a question of exercising patronage, if the hon. the Leader of the Opposition thinks that we are exercising it, we say that we are not interested in exercising patronage. I just mentioned that the High Court sent a penal. We sent it to the Services Commission. We simply acceptedd them. I was thinking whether we could not have some other person. But the Services Commission indicated the priority. We simply accepted the priority, and we accordingly selected the officer. Event with regard to promotion, I may assure the Leader of the Opposition that we do consult the Services Commission and we are generally guided by them. So far as I am concerned, I am very particular that I always accept the views of the Commission. I do not rule out the recommendations of the Commission. Therefore I do not think that there should be any serious objection to this amendment. There is no question of having anybody in view for filling up the permanent vacancy. If that were so, it could be done even without this Amending Bill. (Sri Mohamed Raza Khan: How?) By transfer. The Government can transfer one from the Engineering Department. An Executive Engineer can be transferred as the Commissioner. The Act enables the Government to do so. The Government may transfer a professor in a college as the Commissioner. A lecturer in the Presidency College can be promoted as Commissioner under the terms of the Act. But that is not the idea. Further I want hon. Members to appreciate that after all officers serving well and faithfully and efficiently should not be debarred from promotions. It is a different question whether we are going to appoint them or not. They should not be made to feel that there is no more prospect of promotion at all. Faithful, honest, and efficient officers should not be made to feel that there is no more prospect at all of promotions for them. They must have this avenue open to them. It is another thing whether we appoint them or not. But the question is, how we do it—by promotion or by direct recruitment. The idea is that there should be provision for all contingencies. Once again I may assure the hon. the Leader of the Opposition and hon. Members that we are not interested in exercising patronage. We are interested in the proper administration of these institutions. Therefore, Sir, I hope that this Amending Bill will be accepted by the House

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MR. CHAIRMAN : The question is—

'That the Madras Hindu Religious and Charitable Endowments (Amendment) Bill, 1961 (L.C. Bill No. 3 of 1961), be taken into consideration'.

The motion was put and carried and the Bill was taken into consideration.

Clause 2 was put and carried.

Clause 1 and the Preamble were put and carried.

THE HON. SRI M. BHAKTAVATSALAM : Sir, I move—

'That the Madras Hindu Religious and Charitable Endowments (Amendment) Bill, 1961 (L.C. Bill No. 3 of 1961), be passed'.

MR. CHAIRMAN Motion moved—

'That the Madras Hindu Religious and Charitable Endowments (Amendment) Bill, 1961 (L.C. Bill No. 3 of 1961), be passed'.

SRI K. BALASUBRAMANYA AYYAR : Sir, I do not see eye to eye with what Sri P. T. Rajan said about the judicial officer. A judicial officer, who is a Deputy Commissioner, should not always be thinking of promotion to the position of Commissioner. I think this is a safe principle. So far as promotions from among administrative officers is concerned, it is all right. That is the point.

* THE HON. SRI M. BHAKTAVATSALAM : Sir, I may at once disabuse this idea from the mind of the hon. Member. So far as judicial officers are concerned, there is no need for promotion and there is no question of promotion. If there is a judicial officer, who is a Deputy Commissioner, it will not be by promotion.

MR. CHAIRMAN : The question is—

'That the Madras Hindu Religious and Charitable Endowments (Amendment) Bill, 1961 (L.C. Bill No. 3 of 1961), be passed'.

The motion was put and carried and the Bill was passed.

MR. CHAIRMAN : The House will now adjourn and meet again at 3 p.m. on Monday, the 27th March 1961.

The House then adjourned.

VI.—PAPERS LAID ON THE TABLE OF THE HOUSE.

245. *Review on 'Labour in Madras State in 1960–61'.*

246. *Review on the Nationalized Transport in Madras State,* 1960–61.

247. *Notification issued with G.O. Ms. No.* 450, *Home, dated 4th January* 1961, *directing the collection of quarterly tax in respect of the luxury coach bearing registration No. MDU* 7463 *belonging to the Kodaikanal Motor Union (Private), Limited, Madurai, at the rate of Rs.* 10 *per seat provided in the vehicle.*